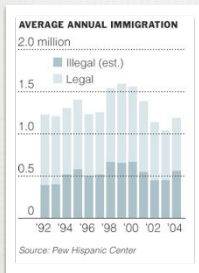


UTAH SENATE BILL 81 UPDATE

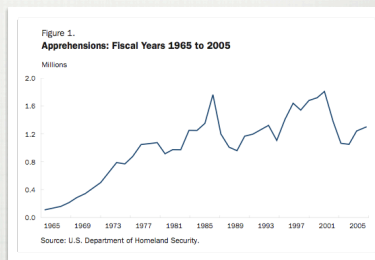


Roger Tsai
Parsons Behle & Latimer

THE UNDOCUMENTED

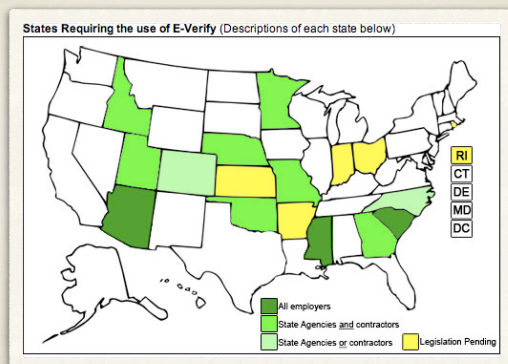


Undocumented Immigrants
Annually



Apprehensions at the Border

State Laws



Source: NumbersUSA

SB 81 - Utah Employers

- * Beginning July 1, 2009 under Senate Bill 81 (applies to new contracts entered into or renewed after July 1) **public employers** and **contractors** must use a status verification system. pg. 14, line 389
- * “contract” means procurement of goods or services awarded through a request for proposals process with a public employer and includes a sole source contract. SB 39
- * Contractor: “subcontractor, contract employee, staffing agency, trade union, or any contractor regardless of its tier.” Subcontractors must certify through an affidavit
- * Choice of several “status verification systems” including E-Verify, Social Security Number Verification Service, or third party system
- * Must be used on all new hires (not existing employees)

All Utah Employers

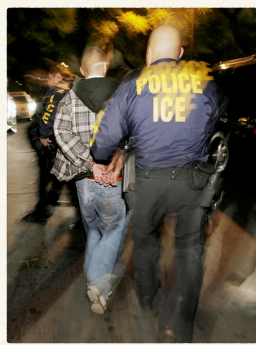
- * Use of E-Verify provides immunity from a private discrimination suit by a U.S. citizen or permanent resident. pg 15 line 414
- * “It is **unlawful** for an employing entity in the state
 - * to discharge an employee working in Utah who is a U.S. citizen or permanent resident and
 - * **replace** the employee with an employee who the employer knows, or reasonably should have known, is an unauthorized alien hired after July 1, 2009
 - * and is working in the state in a job category, that requires equal skill, effort, and responsibility; and which is performed under similar working conditions.”
- * Employers enrolled in E-Verify are **exempt** from liability, investigations, or lawsuits

SB 81

- * **Transporting** undocumented individuals over 100 miles for financial gain is Class A misdemeanor
- * Conceal, **harbor** or shelter from detection for commercial advantage, knowing or in reckless disregard the individual is undocumented
- * Prohibits **state id's** from being issued to undocumented individuals
- * Allows for greater cooperation between local law enforcement **287(g) agreements**

National Update

- * New I-9 Form April 3rd, 2009
- * Circuit Court Decisions
 - * *Chicanos Por La Causa, Inc. v. Napolitano* - States may penalize employers who knowingly employ undocumented. May also mandate use of E-Verify by all employers.
 - * Oklahoma State Law being considered by 10th Circuit.
 - * 3rd Circuit is considering City of Hazleton's law
- * New Administration and a new approach?

[illegible]

President Obama

- * **Remove Incentives to Enter Illegally :** Remove incentives to enter the country illegally by cracking down on employers who hire undocumented immigrants.
- * **Create Secure Borders:** Protect the integrity of our borders. Support additional personnel, infrastructure and technology on the border and at our ports of entry.
- * **Improve Our Immigration System:** Fix the dysfunctional immigration bureaucracy and increase the number of legal immigrants to keep families together and meet the demand for jobs that employers cannot fill.

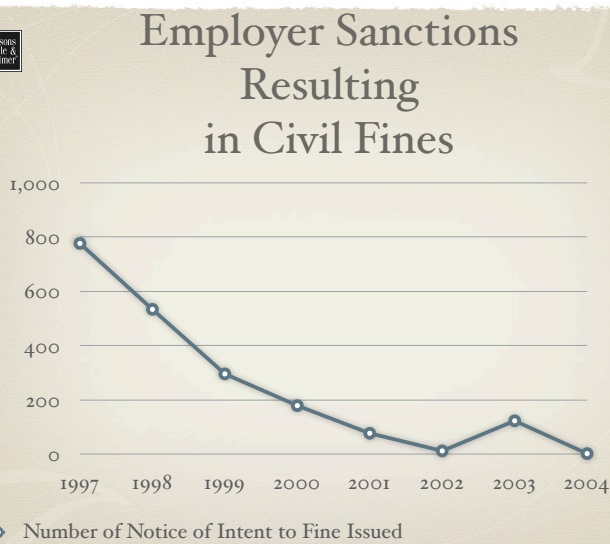
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New Administration

- * Recission of the 2007 Social Security No-Match Reg.
- * Federal Contractors to be implemented Sept. 8, 2009
- * "E-Verify is a smart, simple and effective tool that reflects our continued commitment to working with employers to maintain a legal workforce" - DHS Secretary Napolitano
- * July 2nd 2009, 652 employers receive notices of inspection for their I-9s
- * July 2009, DHS announces settlement fine with Krispe Kreme for \$40,000 for undocumented workers within plant in Cincinnati
- * "ICE will focus its resources in the worksite enforcement program on the criminal prosecution of employers who knowingly hire illegal workers in order to target the root cause of illegal immigration," April 30th 2009

[illegible]

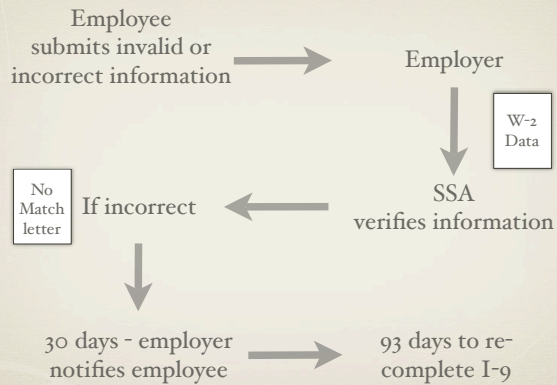
Year	Criminal arrests
1999	~20
2000	~50
2001	~20
2002	~20
2003	~50
2004	~150
2005	~180
2006	~750
2007	863
2008	1,100



- * What does it require?
- * I-9 completion
- * reasonably genuine
- * reverification
- * retention
- * Knowledge
- * Exceptions

[illegible]

NEW REGULATION: SOCIAL SECURITY NO MATCH LETTERS



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Aramark Case

Should I be using E-Verify

- * Employers in Arizona, Colorado, Georgia, Minnesota, Mississippi, North Carolina, Oklahoma, Tennessee
- * Federal agency (Oct. 2007)
- * Federal contractor
- * Public employers and public contractors in Utah
- * Seeking to hire an International Student



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E-Verify

- * Became available to employers in all states in 2004 to check work authorization of new hires
- * Participating employers has jumped from 14,000 to 134,000.
- * Introduced photo capabilities - Sept. 2007
- * Accuracy has increased slightly - 4% tentative non-confirmation
- * <https://vis-dhs.com>

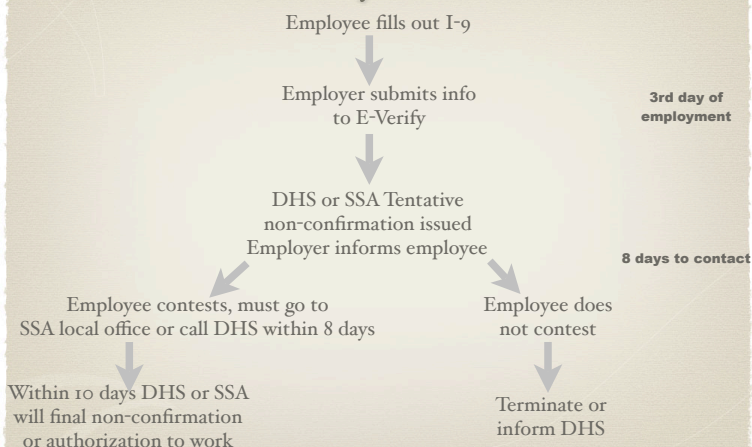


Federal Contractors

- * Final rule requires all contractors and subcontractors for goods or services over \$100,000 to enroll and use E-Verify - Sept. 8, 2009
- * within 30 days of contract award
- * on all new hires hired during the life of the contract and
- * all existing employees who are engaged in the work covered by the contract



E-Verify Process



Using E-Verify

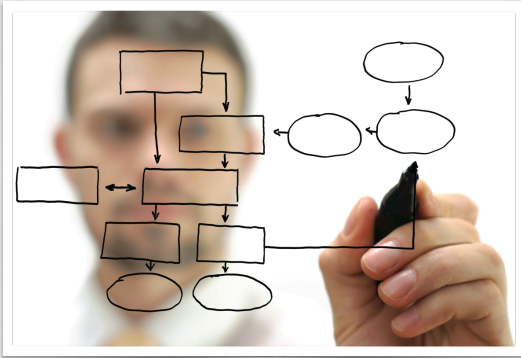
- * Sign Memorandum of Understanding
- * Employees must go through on-line tutorial
- * Use on all new hires within 3 days of hire
- * Potential civil fine for failure to notify DHS of continued employment after final non-confirmation
- * Employment after final non-confirmation creates a rebuttable presumption of knowingly employing an unauthorized alien

Memorandum of Understanding

- * employer allows DHS to make periodic visits to review E-Verify records, I-9 records and interview employees
- * ICE may be given E-Verify information
- * Must still complete an I-9 except
 - * only accept List B documents with a photograph
 - * make copy of permanent resident card, employment authorization document, or foreign passport with I-94, if employee presents one
- * Record case verification number on I-9, or print screen and attach to I-9.
- * Allows for "case in continuance" status if more time is needed to resolve tentative non-confirmation

Summary

- * Review your I-9's
- * Create an immigration compliance program
- * Consider E-Verify participation
- * Be careful and consistent within your hiring practices
- * Follow-up with reliable reports of undocumented workers in your labor force
- * My contact: Roger Tsai, Parsons Behle & Latimer 801-536-6689



UTAH SENATE BILL 81 UPDATE



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